

IN THE CIRCUIT COURT  
OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 06-18980 CF10A  
JUDGE: DALE COHEN

STATE OF FLORIDA,  
Plaintiff,  
vs  
STEVEN GIBBS,  
Defendant.

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Broward County Courthouse  
201 Southeast Sixth Street  
Fort Lauderdale Florida  
August 6th, 2009

HEARING PROCEEDINGS

Proceedings held in the above-entitled cause,  
taken before CARRIE K. GIVEN, Stenographic Reporter  
and Notary Public within and for the state of Florida  
at Large, held before the HONORABLE JUDGE DALE COHEN.

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2 APPEARANCES:3  
4 MARDI LEVEY-COHEN, ESQ.  
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7 STEPHEN MELNICK, ESQ.  
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1 (Thereupon, the following proceedings were had,)

2 THE COURT: Okay. Let's see.

3 Rosendo Louis --

4 MR. MELNICK: He's not present but Mr. Gibbs is  
5 present and Diaphine Joseph (phonetic spelling) has filed.  
6 He's currently in custody in Palm Beach County, hopefully  
7 coming back soon.

8 THE COURT: All right. Mr. Gibbs is on Page 12 and  
9 he is present?

10 MR. MELNICK: Yes, he is present. He is in the  
11 back row, your Honor.

12 THE COURT: All right. Good afternoon, Mr. Gibbs.

13 THE DEFENDANT: Good afternoon.

14 THE COURT: All right. I have a sworn motion to  
15 recuse.

16 All right. Mrs. Cohen, have you had an  
17 opportunity to read the motion?

18 MRS. LEVEY-COHEN: No, I have not.

19 MR. MELNICK: Your Honor, prior to doing that I  
20 think there might be a problem in doing -- If the court  
21 does go forward in this, then what the court may have to  
22 do, besides Mrs. Cohen being subject to cross-examination,  
23 the court is going to have to make a judgement call as to  
24 credibility at this point in time and to decide whether  
25 Mrs. Cohen is credible versus counsel's credibility and

1 it's one of these, I believe, no-win situations that no  
2 matter which way the court rules there is going to be no  
3 --

4 THE COURT: You mean if I rule in your favor I  
5 don't get dinner tonight?

6 MR. MELNICK: No, not saying that but if you rule  
7 in my favor then the recusal stands.

8 THE COURT: Right.

9 MR. MELNICK: If you deny it, I believe then, the  
10 recusal would then stand because what you're saying is  
11 that my spouse is more credible than the undersigned  
12 counsel.

13 THE COURT: We'll approach that bridge when we get  
14 to it.

15 MR. MELNICK: Yeah, but that's what I believe is  
16 going to wind up happening and it's like a no-win  
17 situation. I don't know if we want to go that way  
18 because, no matter what, I believe it will result in the  
19 recusal granted.

20 THE COURT: Okay.

21 MR. MELNICK: If the court wants to go forward,  
22 that's fine but that's, and I've been looking this over,  
23 but I believe that is what the end result is going to be  
24 no matter what.

25 THE COURT: Okay. We'll approach that bridge when

1 we get there.

2 MR. MELNICK: Okay.

3 MRS. LEVEY-COHEN: Okay. I've read it.

4 THE COURT: Raise your right hand.

5 Do you solemnly swear or affirm the testimony  
6 your about to give is the truth, nothing but the truth, so  
7 help you God?

8 MRS. LEVEY-COHEN: I do.

9 THE COURT: State your name.

10 MRS. LEVEY-COHEN: Mardi Levey Cohen.

11 DIRECT EXAMINATION

12 BY THE COURT:

13 Q. All right. Mrs. Cohen, you were involved in an  
14 election with Pedro Dijols?

15 A. Correct.

16 Q. In 2006?

17 A. In 2008.

18 Q. 2008.

19 A. It was 2008, your Honor.

20 Q. All right. Did you have contact with an attorney  
21 named Stephen Melnick?

22 A. Yes.

23 Q. During the course of your campaign prior to the  
24 election?

25 A. Yes, I did.

1 Q. All right. Can you please tell me the  
2 circumstances surrounding that?

3 A. Yes, I don't remember the exact date. I think  
4 there was an advertisement for my opponent, Pedro Dijols,  
5 and it was posted on a courthouse blog and I did see it.  
6 Being that I am aware of the rules that govern candidates,  
7 it was missing a disclaimer. There needed to be a  
8 disclaimer on it that said this was a paid for political  
9 announcement by the candidate.

10 Being that I know Steve Melnick, I've worked  
11 on many cases with him when I was a prosecutor, and I've  
12 known him from around the courthouse and I always thought  
13 that we were friends. I called him up and explained to  
14 him that it was missing a disclaimer and asked if he could  
15 please add the disclaimer to it because I'm well aware of  
16 what the rules are and I've been told in the past, by the  
17 committee that supervises the rules in Tallahassee, that  
18 the best approach is to contact somebody that is either a  
19 campaign manager of that candidate or whoever it is that  
20 is posting that notice and let them know what the rules  
21 were and essentially I told them here's what the rules  
22 were.

23 I told them that you need a disclaimer and  
24 I'm just letting you know that I don't want, you know, to  
25 have to file -- I don't think I said that -- I just said,

1 because the bottom line is that this could violate rules  
2 and Pedro Dijols needs to follow the rules just like  
3 everyone else.

4 Q. And that would be --

5 A. Mr. Melnick has absolutely nothing. He does not,  
6 by under any requirement by any agency whatsoever, to  
7 follow those rules. He can do whatever he wants on behalf  
8 of his candidate.

9 Q. Who would suffer consequences if Mr. Melnick  
10 didn't follow the rules that are --

11 A. The rules -- The campaign rules state that  
12 whatever -- If someone is working for you, whether they be  
13 a treasurer or one of your people that work for you, if  
14 they don't follow the rules it's as if you, yourself, are  
15 not following the rules. So, by Mr. Melnick leaving that  
16 disclaimer out, it had nothing to do with Mr. Melnick, but  
17 Mr. Dijols would have been the one responsible for any  
18 violation.

19 Q. Would you explain that to me?

20 A. Absolutely.

21 It was a very friendly conversation. As I've  
22 said, Mr. Melnick and I have been -- I considered friends  
23 for many years.

24 Q. Did you make any threats to Mr. Melnick?

25 A. Absolutely not.

1 Q. Are you aware that Mr. Melnick was working as an  
2 attorney on the legal staff of Pedro Dijols through  
3 litigation?

4 A. Not until I read it just now, five minutes ago.

5 THE COURT: Mr. Melnick, do you have any  
6 questions?

7 MR. MELNICK: Yes.

8 CROSS-EXAMINATION

9 BY MR. STEPHEN MELNICK

10 Q. Mrs. Cohen, back when I received a telephone call  
11 to you, you're stating that you called me up very  
12 pleasantly and made a pleasant mark about the disclaimer,  
13 is that correct?

14 A. It was a friendly conversation in my opinion.

15 Q. Did -- Number one, it was not the disclaimer. Do  
16 you remember stating "you cannot put re-elect and you must  
17 put the word, retain?" Do you remember if that's what the  
18 problem with the posting was and not the disclaimer?

19 A. I don't remember what the actual -- I know you  
20 can put re-elect.

21 Q. You can or cannot?

22 A. You cannot put re-elect.

23 Q. Okay.

24 A. But if you're saying that's what the conversation  
25 was, you said it was the disclaimer, I'm not going to



1       argue that.

2           Q.   And you don't remember --

3           A.   It said re-elect?

4           Q.   It said re-elect.

5           A.   All right. So she phoned you up to correct that?

6           Q.   And it was more than correct and I don't know if

7       I can just testify but it was not --

8                   THE COURT:    I'll let you testify.

9       BY   MR. STEPHEN MELNICK:

10          Q.   -- In a very friendly tone. Okay. So you're  
11 saying it was a very friendly, nice, pleasant tone, this  
12 conversation, correct?

13          A.   Yeah, you're putting those words in my mouth.

14          Q.   No. I'm asking you, was it a friendly  
15 conversation tone?

16          A.   It was a friendly conversation in my opinion.

17          Q.   In your opinion?

18          A.   Yes.

19          Q.   But could it have been taken in another way that  
20 it was not friendly, polite, and nice?

21          A.   I don't know how someone else can interpret a  
22 conversation I'm having. I can't tell what someone else  
23 is thinking.

24          Q.   And you had no idea during the entire election,  
25 while the election was going on, that I was involved with

1 Pedro, in any of this with Pedro, is what you're saying?

2 A. No, not aware of it at all.

3 Q. Not aware of it at all. You never made any  
4 comments to anyone else about that either?

5 A. I did not know until today that you were involved  
6 in that and I don't know if you're aware but I didn't show  
7 up at any of the recounts. I think I was there for five  
8 minutes.

9 Q. We're not discussing -- I'm not discussing the  
10 recounts. It was discussing the hearing that was involved  
11 in the lawsuit that was filed that Bill Sheir (phonetic  
12 spelling) and I think Bruce Ruego (phonetic spelling)  
13 argued involving that that went on up to the Fourth DCA  
14 and the research involved with that. You don't know --  
15 You really don't know who was involved in that research at  
16 all, do you?

17 A. No, I just thought it was Bruce Ruego and Bill  
18 Sheir.

19 Q. And you're saying under, I guess it's cross-  
20 examination, that you had no idea I had any involvement in  
21 any of this, correct?

22 A. Other than that fund raiser you had, no.

23 Q. I have nothing further.

24 THE COURT: Thank you. Did you want to --

25 MR. MELNICK: I guess I'll tell you what

1 had happened. It was posted on a blog. I notified Jeff  
2 Ivonshuk because I guess Jeff was the one posting it and  
3 the difference, it said re-elect not retain, and within  
4 about three to five minutes of it hitting the blog and  
5 being posted, I received a telephone call from Mrs. Cohen  
6 and the tone of the conversation was not very friendly,  
7 nice, and polite. And basically I was threatened that you  
8 better do --

9 THE COURT: How were you threatened?

10 MR. MELNICK: It's -- The exact words  
11 were, you can't do that. You're making a big mistake and  
12 you will be sorry if it's not changed and I was hung up  
13 on. Those were the terms that were said and I kind of  
14 laughed and said, what can be done to me? But that tone,  
15 being stated to me alone, implicates a threat. And I  
16 don't like being threatened at all, especially when I'm  
17 not doing anything wrong but I received a threat from  
18 Mrs. Cohen. During the campaign, yes, I was directly and  
19 heavily involved in Pedro Dijols' unsuccessful retention  
20 campaign and was directly involved in all the research  
21 involved with that litigation.

22 THE COURT: Well, how did she know you  
23 were behind the scenes working --

24 MR. MELNICK: I don't --

25 THE COURT: -- with Pedro Dijols --

1 MR. MELNICK: My belief is that she knew.  
2 I can't say whether she knew or not.

3 THE COURT: How could she possibly know  
4 what goes through -- this entire law firm and he --

5 MR. MELNICK: I was with Pedro during the  
6 campaign. I was sitting in the courtroom and was there  
7 with Pedro the entire time and --

8 THE COURT: So were about a hundred other  
9 lawyers.

10 MR. MELNICK: Not a hundred lawyers, but  
11 there were a few on his team and our office was his  
12 headquarters and whether Mrs. Cohen will admit it or not,  
13 she knew what our entire involvement was. And what I  
14 believe -- My belief and my client's belief is that based  
15 on those threats, whether real or not, that its human  
16 nature to believe somebody's spouse will look with a  
17 different view at somebody whether it's on purpose or not,  
18 it's normal human nature and nobody can block human nature  
19 out because we all are humans. And what this comes down  
20 to, and I believe I said at that beginning, it's  
21 credibility as to whether you're going to believe what  
22 Mrs. Cohen said to me or what I know she said to me. And  
23 that's, you know, the bridge we didn't want to cross and I  
24 didn't want to cross that but that's what it comes down  
25 to, then if the court finds Mrs. Cohen more credible than

1 myself and makes that ruling then I believe you are  
2 directly saying you are not credible in your eyes and in  
3 my testimony and when I appear before you and testify  
4 before you and make arguments in front of you you're  
5 looking at my credibility and weighing my credibility the  
6 way all judges do with lawyers. And if you say no, I  
7 believe your credibility in what you said and your motion  
8 is factually true, then the motion has to be granted and I  
9 believe that's where we're at right now. So we just need  
10 a ruling from the court on these motions.

11 THE COURT: I don't think I have to make  
12 any kind of ruling as to the factual dispute.

13 MR. MELNICK: No, it's just that it  
14 doesn't meet the factual <sup>factually</sup> minimal requirements. And if it  
15 meets the factual minimal requirements then it's granted.

16 THE COURT: Right.

17 MR. MELNICK: But if the court's saying it  
18 doesn't meet the factual minimum requirements then we have  
19 the right to say why is it not meeting it and if you're  
20 saying the facts are not true then you're questioning the  
21 facts that were just presented.

22 THE COURT: And I understand all of that.

23 MR. MELNICK: Yeah.

24 THE COURT: And I know you spent a great  
25 deal of time on recusal with Judge Gold. *Shoo!*

1 MR. MELNICK: Yeah. And if the court is  
2 saying that, in questioning as to what we said, if you  
3 want an affidavit or to take testimony if you feel it is  
4 necessary from Pedro Dijols, I can have him in here  
5 tomorrow because after I received a phone call from  
6 Mrs. Cohen I called up Pedro and said you're not going to  
7 believe what just happened and the call I just received.

8 THE COURT: Well you can't say re-elect.  
9 That doesn't give you the --

10 MR. MELNICK: I know that. That's fine  
11 but it doesn't give you the right to threaten somebody.

12 THE COURT: Supposedly, she didn't  
13 threaten anybody.

14 MR. MELNICK: I know that and that's what  
15 it comes down to.

16 THE COURT: Pedro would have gotten in  
17 trouble with the JQC --

18 MR. MELNICK: That's --

19 THE COURT: -- if you don't have the same  
20 or --

21 MR. MELNICK: But that's not threatening  
22 Pedro. The threat was said to me, you will be sorry.  
23 It's not, he will be sorry. You're making a big mistake  
24 and you'll be sorry. Means to me, not Pedro.

25 THE COURT: Right. Okay.

1 MR. MELNICK: So, you know --

2 THE COURT: Anyway, my concern is that if  
3 an attorney has bad information and then passes it on  
4 their client just to get a recusal, that doesn't satisfy  
5 -- But not going to make any type of factual determination  
6 obviously. Before we started the hearing I can't --

7 MR. MELNICK: I know.

8 THE COURT: I just wanted to try and flush  
9 things out so -- You've been a friend for twenty years and  
10 --

11 MR. MELNICK: I've known --

12 THE COURT: You helped Mardi in her first  
13 campaign.

14 MR. MELNICK: I know.

15 THE COURT: You've done a lot for her in  
16 her first campaign.

17 MR. MELNICK: I know.

18 THE COURT: So --

19 MR. MELNICK: And this is -- But this is  
20 -- It's not an automatic -- you know, I'm doing it now. I  
21 tell these clients -- It's the client's choice, not mine.  
22 I tell the client, because as this court knows, I've taken  
23 other pleas in here. I tell the clients, this is what  
24 went on. What do you want me to do? And the state, and I  
25 know Ms. Hill (phonetic spelling), Ms. Barner (phonetic

1 spelling), Ms. Ocasio, Mr. Griffis, when they were here,  
2 on cases.

3 We've plead cases out all the time in here  
4 because I've given them the choice. I've said, "this is  
5 the situation. What do you want to do?" And they've  
6 said, we'll stay. That's no problem. But I have to give  
7 them the option. I don't make the choice for them and I  
8 give them the option and they make their decisions.

9 THE COURT: Right. Okay. Well, obviously  
10 this is granted. Will you rather --

11 MR. MELNICK: Rosend Lewis, Mr. Gibbs who  
12 is present, and Diaphine Joseph (phonetic spelling).  
13 Mr. Calloway never requested it during the dependency of  
14 this so there's none in there from Mr. Calloway.

15 THE COURT: Okay.

16 MR. MELNICK: So, that's not an issue as  
17 the court sees.

18 THE COURT: I'm not offended. I just --

19 MR. MELNICK: I know.

20 THE COURT: -- not really clear on  
21 everything.

22 MR. MELNICK: Okay. So, now does it -- I  
23 guess you understand the whole -- and what the choice that  
24 was for Mr. Gibbs?

25 THE COURT: I understand. I'm going to



1 grant it on all three.

2 MR. MELNICK: Okay. And I guess we'll get  
3 new dates and --

4 THE COURT: New judges --

5 MR. MELNICK: -- and new times and  
6 everything?

7 THE COURT: A new time.

8 MR. MELNICK: And we'll get a new notice  
9 on Mr. Calloway's -- I'll take his notice, your Honor.

10 THE COURT: Okay.

11 MR. MELNICK: Mr. Calloway is currently in  
12 the care and custody of the United States Federal  
13 Government.

14 Thank you.

15 THE COURT: All right. Thank you.

16 (Whereupon, the hearing concluded.)

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## CERTIFICATE

COUNTY OF BROWARD)  
STATE OF FLORIDA)

I, CARRIE K. GIVEN, Shorthand Reporter and Notary  
Public in and for the State of Florida at Large, do hereby  
certify that the foregoing is true and accurate as  
reported by and before me at the time and place and the  
date herein before forth.

I do further certify that I am neither a relative  
nor employee not attorney nor counsel of any the parties  
to this action, and that I am neither a relative nor  
employee of such attorney or counsel, and that I am not  
financially interested in this action.

Witness my hand and official seal in the city of  
Fort Lauderdale, County of Broward, State of Florida.



Carrie K. Given

Court Reporter